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In the Supreme Court of the United States

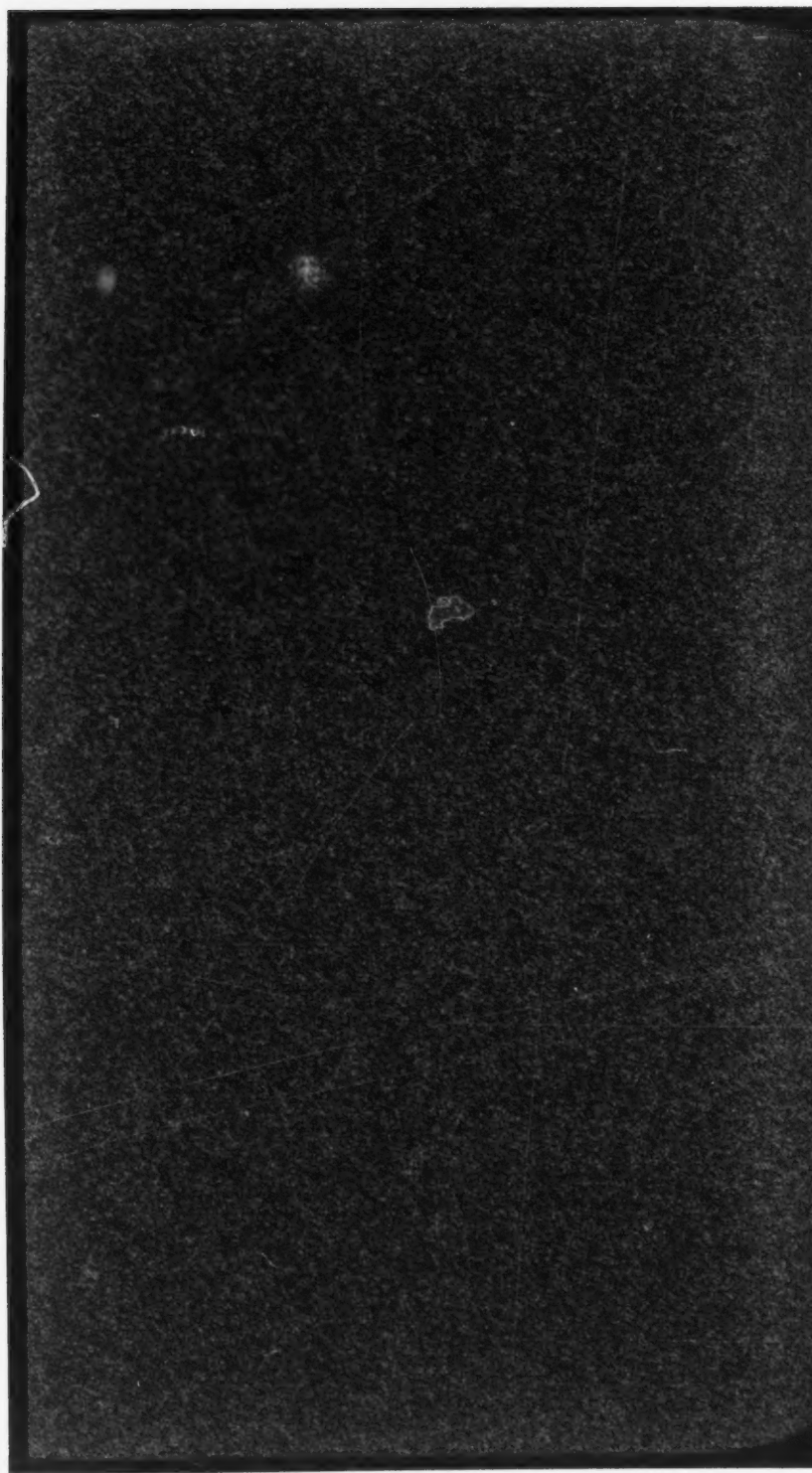
OCTOBER TERM, 1926

FEDERAL TRADE COMMISSION, PETITIONER

ALFRED KLEENER, DOING BUSINESS UNDER THE  
NAME "SHADE SHOP," HOOPER & KLEENER

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF THE DISTRICT OF COLUMBIA, AND BRIEF  
IN SUPPORT THEREOF

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# In the Supreme Court of the United States

OCTOBER TERM, 1925

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No. —

FEDERAL TRADE COMMISSION, PETITIONER

v.

ALFRED KLESNER, DOING BUSINESS UNDER THE  
name "Shade Shop," Hooper & Klesner

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF THE DISTRICT OF COLUMBIA, AND BRIEF  
IN SUPPORT

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The Solicitor General and the Chief Counsel of the Federal Trade Commission, on behalf of the Commission, pray that a writ of certiorari issue from this Court to review the judgment of the Court of Appeals of the District of Columbia entered in the above-entitled cause on the 1st day of June, 1925, which judgment dismissed the Commission's petition to that court to enforce the Commission's order requiring the respondent to cease and desist from the use of unfair methods of competition in violation of section 5 of the Federal Trade Commission Act. (R. II, p. 6.)

**THE FACTS**

The respondent is engaged, among other things, in the manufacture and sale of window shades in the District of Columbia, doing business under the name and style "Shade Shop." For some years prior to respondent's entry into this business another firm had been engaged exclusively in the window-shade business under the name and style "The Shade Shop" and had become well and favorably known to the purchasing public by that name. The charge of the complaint was that respondent, by the use of the name "Shade Shop," was deceiving the purchasing public into the belief that his establishment was that of his long-established competitor; and by this means was causing persons to deal with the respondent in the belief that they were dealing with his competitor, "The Shade Shop."

The respondent answered, evidence was received upon the issues joined, oral argument was had before the Commission, and after due deliberation the Commission made its report upon the facts and issued its order requiring the petitioner to cease and desist from doing business in the District of Columbia under the name "Shade Shop."

The respondent failed and refused to obey the order, and the Commission applied to the Court of Appeals of the District of Columbia for a decree of enforcement. Briefs were filed and oral argument had. The Court, without considering the merits of

the case, held that it was without jurisdiction in the premises and dismissed the Commission's petition.

#### QUESTION PRESENTED

Whether the Court of Appeals of the District of Columbia has jurisdiction under Section 5 of the Federal Trade Commission Act, (a) to enforce orders of the Federal Trade Commission entered against persons engaged in commerce within the District of Columbia requiring them to cease and desist from the use of unfair methods of competition within the District, or (b) to modify or set aside such order of the Commission at the instance of parties engaged in commerce within the District of Columbia and against whom the Commission has issued such orders.

While the jurisdiction of the Court of Appeals of the District of Columbia to enforce orders of the Federal Trade Commission, as well as of the Interstate Commerce Commission and the Federal Reserve Board, entered under authority of Section 11 of the Clayton Act, is not put in issue by the pleadings in this case, the decision here must be taken as determining that the court is without jurisdiction in such cases. The wording of Section 11 of the Clayton Act, which provides for the enforcement of Sections 2, 3, 7, and 8 of that Act, and of that part of Section 5 of the Federal Trade Commission Act, which provides for the enforcement of orders of the Commission entered under the authority of that section, is identical.

**REASONS FOR THE ISSUANCE OF THE WRIT**

The substantive law of Section 5 of the Commission Act in terms applies to commerce within the District. The manifest purpose of Congress was to prohibit the use of unfair methods of competition not only in interstate commerce but in commerce within the District of Columbia. It is clear that if the Court of Appeals of the District of Columbia does not have jurisdiction to enforce the Act, no other court within the District has, and therefore the law can not be enforced. Nor can parties against whom similar orders have been issued prosecute a proceeding to have them set aside. It is therefore important that this Court determine the question of jurisdiction. If it be conclusively determined that the Court of Appeals of the District of Columbia does not have jurisdiction, Congress, being advised to that effect, can remedy the defect by further legislation.

WILLIAM D. MITCHELL,  
*Solicitor General.*

WM. H. FULLER,  
*Chief Counsel, Federal Trade Commission.*  
AUGUST, 1925.

**BRIEF****Opinion of the Court of Appeals of the District of Columbia**

The opinion in this cause has not appeared in the Federal Reporter. It will be found in the Washington Law Reporter for 1925 at page 505, and printed copies have been sent up with the record. (R. II, p. 3.)

**Grounds of jurisdiction**

This was a petition to the Court of Appeals of the District of Columbia for the enforcement of an order of the Federal Trade Commission entered under authority of Section 5 of "an Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes." (38 Stat. 717.) The jurisdiction of the court below was invoked under the authority of Section 5 of the Act. (R. I, p. 384.) The court below dismissed the petition for want of jurisdiction. (R. II, p. 6.)

The jurisdiction of this Court is invoked under Section 5, paragraph 4 of the Trade Commission Act (38 Stat. 717), and under Section 240 of the Judicial Code as amended by the Act of February 13, 1925. (*Federal Trade Commission v. Gratz et al.*, 253 U. S. 421.)

**Errors to be urged**

The only error to be urged is that the court erred in dismissing the petition upon the ground of want of jurisdiction in the premises.

**The Court of Appeals of the District of Columbia is the proper court in that District to enforce the orders of the Federal Trade Commission**

The material provisions of the Federal Trade Commission Act, so far as this case is concerned, are to be found in those portions of Section 5, quoted below:

That unfair methods of competition in commerce are hereby declared unlawful. The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

“ Commerce ” means commerce among the several States or with foreign nations, *or in any Territory of the United States or in the District of Columbia*, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. (Sec. 4.)

If such person \* \* \* fails or neglects to obey such order of the Commission while the same is in effect, the Commission may apply to the Circuit Court of Appeals of the United States, within any circuit where the

method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order \* \* \*.

The jurisdiction of the Circuit Court of Appeals of the United States to enforce, set aside, or modify orders of the Commission shall be exclusive.

The statute provides also that any party against whom an order is issued may obtain a review of the order by applying to the proper Circuit Court of Appeals.

It was clearly the intention of Congress to eliminate and prevent unfair methods of competition in commerce within the District of Columbia.

As the Court of Appeals is in character a Circuit Court of Appeals of the United States, it has jurisdiction to enforce the orders of the Federal Trade Commission, and unless it takes jurisdiction to enforce the Commission's orders the Act can not be carried out, and the public in the District is without protection from the use of unfair methods of competition in commerce therein.

1. The duty of the court in construing the statute is to ascertain the intent of Congress in its enactment and then to apply the intent to the facts in this case

The field of operation of the Trade Commission Act includes commerce "in the District of Columbia." Certainly then the intent of Congress, as expressed in this Act, was to prevent unfair methods of competition in commerce in the District of Columbia.

The first and controlling question for determination in the construction of statutes is the legislative intent. *Miles v. Fortney* (Mich. 1923), 194 N. W. 605, 607. "Intention, if we can ascertain what it was, must be controlling—intention always being a vital question in the interpretation of statutes. *Canoe Creek Coal Co. v. Christinon* (1922), 281 Fed. Rep. 559, at page 566, third full paragraph, last sentence." A case may be within the meaning of a statute and not within its letter, and within its letter and not within its meaning. The intention of the lawmakers constitutes the law." *In re Sargent Lumber Co.* (1923 Bankruptcy Act), 287 Fed. Rep. 154, 155, quoting from *Stewart v. Kahn*, 78 U. S. 493: "In construing these statutes it is of course the duty of the court to endeavor to ascertain the intention and policy of Congress in the enactment of the legislation in question, and then to make practical application of that intention to the facts of this case. The fundamental rule of interpretation is that a statute is to be expounded 'according to the intent of them that made it.' " 4 Inst. 220; *Sussex Peerage*, 11 Cl. & F. 143. *United States v. Commissioner of Immigration* (Nov., 1922, Immigration Acts), 285 Fed. Rep. 295, at page 298 (1). "The fundamental rule and 'pole star of statutory construction' is to ascertain and give effect to the intention of the legislature. In pursuance of that purpose the courts have established the rule that a statute must be construed

with reference to the object intended to be accomplished by it." *United States v. Musgrave*, (D. C.) 160 Fed. 700; *St. Louis, etc. v. Delk* (C. C. A.) 162 Fed 145; that the spirit or reason of the law will prevail over its letter, *Holy Trinity Church v. United States* 143 U. S. 457; *Wilkinson v. Leland* 2 Peters 627.

"It is the duty of this court (the Supreme Court of the United States) to give effect to the intent of Congress. Primarily this intent is ascertained by giving words their natural significance; but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail." *Ozawa v. United States* (1922), 260 U. S. 178, at page 194, citing *Holy Trinity Church v. United States*, 143 U. S. 457, and *Heydenfeldt v. Daney Gold and Silver Mining Co.*, 93 U. S. 634, 638.

2. Remedial statutes, including those relating to appeals, are to be liberally construed. The Federal Trade Commission Act is remedial in its character

Remedial statutes are to be liberally construed. The Federal Trade Commission Act is not a penal statute. It is remedial in its character. (*Sears, Roebuck & Co. v. Commission*, 258 Fed. 307, 311.)

It nowhere provides punishment by fine or imprisonment for violation of Section 5 thereof. This is a Section 5 case. The Commission can only enforce its orders in the courts. Such a statute, being remedial in character and created to protect public and not private interests, should be liberally construed.

Statutes relating to appeals are not to be narrowly construed, since they are remedial in their nature. *Hutchins v. Dante* (No. 17, 1917) 47 App. D. C. 99, at 100; Lewis' Sutherland Statutory Construction, Vol. 2, p. 1304, Sec. 717.

Statutes giving the right of appeal are liberally construed in furtherance of justice; *Heil v. Simmonds*, 17 Colo. 47. 28 Pac. 475; *Stephens v. Cherokee Nation*, 174 U. S. 445; *Snyder v. Washtenaw, Circuit Judge*, 80 Mich. 511; 45 N. W. 596. Such an interpretation as will work a forfeiture of that right is not favored. *Houk v. Barthold*, 73 Ind. 21, 25; *Pearson v. Lovejoy*, 53 Barb. 407; *Cally v. Anson*, 4 Wis. 223.

An Act intended to extend the right of appeal is remedial and should receive a liberal construction. If it provides a remedy in a case where otherwise injustice might be done, it should be given effect in all cases where proceedings have not been had to such an extent as to exclude its application. Lewis, Sutherland Stat. Const. p. 1305, 2d Vol. *Converse v. Burrows*, 2 Minn. 229; *Vigo's case*, 21 Wall. 648.

“A statute giving a certiorari was so framed that literally it was available only to the complainant to review proceedings in the statutory action for forcible entry and detainer. But as it was deemed reasonable to extend to the defendant the same means for the correction of errors as to the plaintiff when similarly situated the right was held reciprocal and alike demandable by either party.” Sutherland on Statutory Construction, 1891, Sec. 440, citing *Russel v. Wheeler* (1821), Hempst. 3. See *Barrett v. Chitwood*, 2 Bibb. 431.

Statutes giving or extending a right of appeal are always liberally construed in furtherance of justice, and the courts will endeavor to avoid pressing upon them such a construction as would work a forfeiture of the right in the particular case. *People v. Sholem*, 238 Ill. 203, 87 N. E. 390; *Mitchell v. California & O. S. S. Co.*, 154 Cal. 731; 99 Pac. 202. *Williams v. Miles*, 62 Neb. 566; 87 N. W. 315; *Cain v. State*, 74 N. E. 1102. Cen. Dig. 324, Dec. Dig. 324.

**3. Jurisdiction may be conferred upon Federal courts by terms not coinciding literally with the statutory designation of such courts**

While very cautions in construing Acts of Congress as conferring jurisdiction upon the inferior Federal courts unless the language is clear and explicit, this court nevertheless holds that both appellate and original jurisdiction is conferred where it is the manifest purpose to confer it and where to hold otherwise would leave the parties without

appeal or the substantive law without means of enforcement. Thus appellate jurisdiction has been upheld where the language of the statute did not exactly describe the courts which were ultimately held to have jurisdiction or did not definitely include the class of cases in which jurisdiction was held to have been conferred. In *Steamer Coquitlam v. United States* (163 U. S. 346), this Court held that the Act of March 3, 1891, which declared that the Circuit Court of Appeals shall have the same appellate jurisdiction to review judgments of the Supreme Courts of the Territories as by this Act they may have to review judgments of the District and Circuit Courts, conferred jurisdiction upon the Circuit Court of Appeals for the Ninth Circuit to review decisions of the highest court of Alaska, although the statutory designation of that court was "District Court" and the highest courts of the other Territories were termed "Supreme Courts." This Court said in part:

Alaska is one of the Territories of the United States. It was so designated in that order (order of Supreme Court May 11, 1891) and has always been so regarded. And the court established by the Act of 1884 is the court of last resort within the limits of that Territory. It is, therefore, in every substantial sense the Supreme Court of that Territory. No reason can be suggested why a Territory of the United States, in which the court of last resort is called a Supreme Court, should be assigned to some circuit es-

tablished by Congress that does not apply with full force to the Territory of Alaska, in which the court of last resort is designated as the District Court of Alaska. *The title of the territorial court is not so material as its character.* Looking at the whole scope of the Act of 1891, we do not doubt that Congress contemplated that the final orders and decrees of the courts of last resort in the organized Territories of the United States—by whatever name those courts were designated in legislative enactments—should be reviewed by the proper Circuit Court of Appeals, leaving to this Court the assignment of the respective Territories among the existing circuits.

In *Craig v. Hecht* (263 U. S. 255) this Court held that the provision of the Act of March 3, 1891,

SEC. 4. That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts, but all appeals, by writ of errors or otherwise, from said *district courts*<sup>a</sup> shall only be subject to review in the Supreme Court of the United States or in the Circuit Court of Appeals hereby established,”

and the further provision that—

“the Circuit Courts of Appeals shall exercise appellate jurisdiction to review by

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<sup>a</sup> Italics supplied.

appeal or writ of error final decisions in the District Courts,"

authorized a review by the Circuit Court of Appeals of a final order of a district judge made at chambers, as distinguished from a "final decision of a district court." In that case this court had before it conflicting decisions of the Circuit Court of Appeals for the Fifth Circuit—*Hoskins v. Funk* (239 Fed. 278) and the Circuit Court of Appeals for the Eighth Circuit—*Webb v. York* (74 Fed. 753) on the point, the former holding that the Circuit Court of Appeals Act did not confer upon the court jurisdiction to review the decision of a district judge made at chambers in vacation, and the latter holding to the contrary. This court quoted with approval the decision in *Webb v. York*, which was based almost wholly upon the ground that the legislature obviously did not intend to abolish the right of appeal in such cases. The portion of the decision in the *Webb case*, quoted with approval by this Court, is as follows:

The result is that, unless the Act of March 3, 1891, is construed as lodging in the Circuit Court of Appeals the appellate jurisdiction, under Section 763, from final decisions of district judges, that was previously exercised by the circuit courts, the right of appeal, plainly granted by that section, from final decisions of district judges at chambers in habeas corpus cases is lost, and becomes valueless, because no court has been designated to which appeals in such cases may be

taken. We think it clear that it was not the purpose of Congress to thus legislate. *If it had intended to abolish the right of appeal from the decisions of district judges in habeas corpus cases, it would doubtless have done so in plain and direct terms. The fact that the right of appeal was not thus abolished furnishes a persuasive inference that Congress intended to designate a court to hear and determine such appeals.\** In *McLish v. Roff*, 141 U. S. 661, 666, 12 Sup. Ct. 118, and in *Lau Ow Bew v. United States*, 144 U. S. 47, 12 Sup. Ct. 517, it was said, in substance, by the Supreme Court of the United States that it was the purpose of the Act of March 3, 1891, to distribute the entire appellate jurisdiction theretofore exercised by the Federal Courts between the Supreme Court of the United States and the Circuit Courts of Appeals that were thereby established. This intent, we think, is plainly apparent from the terms of the Act. Moreover, the Act in question very much enlarged the right of appeal, and that was one of its chief objects. In no single instance, so far as we are aware, was a previous right of appeal abolished. We think, therefore, that it may be fairly concluded that it was the intention of Congress to confer on the Circuit Courts of Appeals the right to hear appeals from final "orders made by district judges in habeas corpus cases, as well as to hear appeals from final decisions of District Courts made in such cases. We can conceive

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\* Italics supplied.

of no reason why the right should be denied in the one case and granted in the other, and such we believe was not the intent of the lawmaker."

This court reached the conclusion that jurisdiction attached in such cases, despite the fact that the previous statute specifically providing for an appeal in such cases, was expressly repealed by the Circuit Court of Appeals Act.

But the refusal to allow an appeal does not ordinarily deprive parties of all means of enforcing their legal rights or render futile the acts of the legislative body, but merely serves to vest the final decision in a subordinate court. How much more imperatively does public policy require a liberal rule in a case like that now under consideration where to deny jurisdiction is to deny all remedy to the public and to destroy all the other remedial features of the Federal Trade Commission Act so far as the District of Columbia is concerned?

**4. The courts of the District of Columbia are a part of the Federal judicial system and have jurisdiction to enforce general Federal statutes applicable to the District of Columbia**

Congress has exclusive legislative power over the District of Columbia. It is its policy that all laws generally applicable to the United States shall have the same force and effect within the District of Columbia as elsewhere within the United States. (16 Stat. 419, 426; *Benson v. Henkel*, 198 U. S. 1, 14.) For this purpose the courts of the District

of Columbia are courts of the United States; and in the enforcement of general Federal laws that court of the District of Columbia which corresponds to the Federal court on which jurisdiction is conferred by the statute has jurisdiction. Recognizing this policy, the courts, in construing enactments of Congress, decline to adopt such a strict interpretation as will defeat the manifest legislative intent in this regard. Thus in *Benson v. Henkel*, *supra*, the court held that the Supreme Court of the District of Columbia was a "Court of the United States" and that the District of Columbia was a "District" within the meaning of R. S. 1014 providing for the apprehension and holding for trial before such "Court of the United States" as by law had cognizance of the offenses and for the removal of persons under indictment for crimes against the United States from one "district" to another. The court's opinion on this point in the case closed with the following comment:

In conclusion of this branch of the case it may be said that any construction of the law which would preclude the extradition to the District of Columbia of offenders who are arrested elsewhere would be attended by such abhorrent consequences that nothing but the clearest language would authorize such construction. It certainly never could have been intended that persons guilty of offenses against the laws of the United States should escape punishment simply by cross-

ing the Potomac River, nor upon the other hand that this district should become an Alsatia for the refuge of criminals from every part of the country.

So, where the Judicial Code provided that "the writ of injunction shall not be granted by any court of the United States" to stay proceedings of any court of a State, except in cases where such injunctions may be authorized by any law relating to bankruptcy, the Court of Appeals of the District of Columbia held that the statute applied to the Supreme Court of the District of Columbia and that court was prohibited from issuing an injunction to stay proceedings in courts of the State of Maryland. (*Hyattsville Building Association v. Bowick*, 44 D. C. App. 408.)

Where general Acts of Congress have been clearly applicable to the District of Columbia, or where the District has by express terms been included within the field of operation of the statute, the courts have not permitted the statutes to fall for want of a tribunal in the District of Columbia to enforce them.

The case of *United States v. B. & O. Railroad* (26 D. C. App. 581) turned upon the question whether the Supreme Court of the District of Columbia, sitting at special term, had jurisdiction to try a civil suit for the recovery of a penalty for a violation of the Safety Appliance Act. The substantive law of the Act as originally passed did not

expressly apply to railroads in the District of Columbia.

By an amendment it was provided that the penalty of \$100 imposed by the original Act should be recoverable in a civil suit to be brought by the United States district attorney in the "District Court of the United States having jurisdiction in the locality where such violation shall have been committed." By a still later amendment the substantive law was expressly made applicable to railroads within the District of Columbia, but no jurisdiction was expressly conferred upon any court within the District of Columbia to entertain suits under the Act. The United States brought an action in the Supreme Court of the District of Columbia for a recovery for a violation of the Act within the District. The Court of Appeals held, reversing the trial court, that the Supreme Court of the District of Columbia had jurisdiction.

While in that case the court quotes Section 84 of the Code of the District of Columbia, which provides that the Supreme Court of the District shall have and exercise the same powers as the other District Courts of the United States, the decision is not rested solely upon this provision but upon the broader ground that where a statute specifically applies to the District of Columbia that court in the District which occupies the place similar to that occupied by the United States District Court in the Federal judicial system has jurisdiction. The court declared that since the Act specifically includes the

District of Columbia within its field of operation, and since Section 1 of the District Code requires that all Acts of Congress applicable to all parts of the United States must be enforced in the District of Columbia, when Congress imposed a penalty for a violation of the Act and provided that suits for recovery should be brought in the United States District Court having jurisdiction in the locality where the violation was committed, Congress intended to include within the phrase "United States District Court" that United States court in the District of Columbia proper to take jurisdiction.

The decision is based in large measure upon the reasoning of this Court in the *Steamer Coquitlam* case above discussed.

In *Benson v. Henkel*, *supra*, this Court declined to permit persons accused of offenses against the United States to escape the provisions of the statute authorizing their removal from one district to another, on the ground either that the District of Columbia was not a "District" of the United States or that the Supreme Court of the District of Columbia was not a "District Court" of the United States. And in *Arnstein v. United States* (296 Fed. 946) the Court of Appeals of the District of Columbia held that the Supreme Court of the District was the proper court in which to indict for a conspiracy, under Section 37 of the Penal Code, to bring into the District of Columbia stolen stock in violation of Section 836a of the Code of the

District of Columbia, as added by the Act of December 21, 1911 (37 Stat. 45), though Section 37 of the Penal Code provides that the offenses denounced thereby shall be cognizable in the Circuit and District Courts of the United States.

Conversely, litigants may not escape the limitations upon the jurisdiction of the United States District Courts by instituting proceedings in the Supreme Court of the District of Columbia.

Thus, the Court of Appeals of the District of Columbia held that a statute which provided that a writ of injunction should not be granted by any court of the United States to stay proceedings in any court of a State applied to the Supreme Court of the District of Columbia. (*Hyattsville Building Association v. Bouick, supra.*)

**5. The Court of Appeals of the District of Columbia is a "Circuit Court of Appeals" within the meaning of the Trade Commission Act**

The courts of the District of Columbia and of the Territories perform the functions elsewhere performed by both State and Federal courts. For the purpose of enforcing Federal statutes of general application, these courts are a part of the Federal judicial system, while in other respects they have the jurisdiction of the State courts.

The Supreme Court of the District of Columbia is not a "District Court" of the United States within the meaning of Section 1 of the Judicial Code, nor is the District of Columbia a "Judicial

District " within the meaning of Chapter 5 of the Judicial Code. But for the purpose of entertaining criminal prosecutions and civil suits for the enforcement of general laws of the United States applicable to the District of Columbia, the Supreme Court of the District is a " District Court " and the District of Columbia a Federal "Judicial District." The Supreme Court of the District has by statute the powers of the District Courts of the United States in the several judicial districts, though it is not in terms declared to be a district court. It entertains all suits and prosecutions in the District of Columbia under Federal laws generally applicable to the United States and to the District of Columbia.

Similarly, the Court of Appeals of the District of Columbia occupies a similar position in the Federal judicial system to that occupied by the various Circuit Courts of Appeals in the several judicial circuits. It has jurisdiction to review by appeal or writ of error all cases tried in the Supreme Court of the District of Columbia, including suits and prosecutions for violations of Federal statutes. Its jurisdiction in this respect is identical with that of the Circuit Court of Appeals in the nine judicial circuits.

The District Courts of the United States, the Supreme Court of the District of Columbia, and the corresponding Territorial Courts are, in practically

all cases, courts of original jurisdiction to entertain suits and prosecutions under general Federal statutes. Had the Federal Trade Commission Act provided that the District Courts of the United States should have jurisdiction to review orders of the Commission, the Supreme Court of the District of Columbia, under the decisions cited, would unquestionably have had jurisdiction to review such orders in the District of Columbia.

In passing the Federal Trade Commission Act<sup>4</sup>, however, Congress, for reasons of its own, departed from its usual custom of lodging in the District Courts original jurisdiction to entertain suits under general laws, and conferred upon the Circuit Courts of Appeals original jurisdiction to review orders of the Federal Trade Commission. Manifestly, its intent was to include within the words "Circuit Court of Appeals of the United States" the Court of Appeals of the District of Columbia, which, it is urged, is a Circuit Court of Appeals within the meaning of these words as used in the statute. The Court of Appeals of the District of Columbia is a court of the United States and it is an appellate court intermediate between the United States court of original jurisdiction in the District of Columbia—the Supreme Court of the District of Columbia—and the Supreme Court of the United States. It is the proper court to exercise jurisdiction in these cases and Congress intended that it should have that jurisdiction.

While the Federal Trade Commission Act is not criminal and the construction given it by the court below in the case at bar is not therefore attended with the consequences which this court so vividly portrays in *Benson v. Henkel*, *supra* (p. 17), it is nevertheless equally clear from the face of the statute itself that Congress did not intend the District of Columbia to be the only place in the United States under Federal jurisdiction where the methods of competition prohibited by the Act could be employed with impunity.

Nor did it intend that orders of the Trade Commission, Interstate Commerce Commission, and the Federal Reserve Board, made under the authority of Section 11 of the Clayton Act, should be without force and effect within the District of Columbia because of lack of a tribunal to which these bodies can appeal for their enforcement.

#### CASES DISTINGUISHED

Certain decisions of this Court are urged as conclusive against the petitioner. Conspicuous among these are the opinions in *Tefft v. Mansuri* (222 U. S. 114) and *Swift v. Hoover* (242 U. S. 107). In the former case, this Court held that it had no jurisdiction under the Bankruptcy Act to review a decision of the District Court of the United States for the District of Porto Rico in a step in a proceeding in bankruptcy, but only to review decisions of that court in controversies in bankruptcy. In the latter case this Court held that it was without

jurisdiction to review a decision of the Supreme Court of the District of Columbia, refusing to adjudge the defendant a bankrupt, on the ground that such a question does not involve a controversy in bankruptcy but is a mere step in a bankruptcy proceeding. The decisions in these two cases are not opposed to the petitioners' contention for the reason that in these cases the decision of the Court was in keeping with legislative policy and intent as expressed in the bankruptcy acts, which had provided that decisions of the courts of original jurisdiction in mere steps in bankruptcy proceedings should be reviewed by the Circuit Courts of Appeals and that only controversies in bankruptcy should go to this Court. The decisions in these cases therefore but carried out the known and long-established policy of Congress. In the instant case, the decision of the court below is not in accord with the legislative policy as expressed on the face of the statute.

It is submitted that the decision of the court below was erroneous and that the decree should be reversed.

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